

The Impact of Employment of Foreign Workers: Local Employability and Trade Union Roles in Malaysia

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Abstract

The issue of foreign workers has received increase media and national attention. However, to date there has been limited research on the nature and consequences of employment of foreign workers in Malaysia. Introduction of significant changes in recruitment phenomenon has ended in painful and traumatic atmosphere which barely acceptable by local workforce in Malaysia. This conceptual paper can be derived from the field of industrial relations which play a significant role in employment of foreign workers. The article reports on the preliminary findings on employment status of local workforce and trade union rights affected by employment of foreign workers. In addition, the research makes a number of recommendations, including the need for further development on reducing the employment of foreign workers and more refined targeting of vulnerable foreign workers linked with labour legislations.

Keywords: Malaysia, foreign workers, trade union rights, local workers and employability

Introduction

For over the past decade, Malaysia has over dependence on the foreign workers the number of foreign workers has increase gradually in Malaysia. According to the Economic Report 2010/2011 by the Finance Ministry, there were 1.8 million registered foreign workers in Malaysia, 38.2% were employed in the manufacturing sector, 16% in the construction and 14.2% in the plantation sectors. Indonesia accounted for the highest number of registered foreign workers in Malaysia at 50.9% followed by Bangladesh was second highest, accounting for 17% of the total foreign workers in Malaysia, Nepal at 9.7%, Myanmar, 7.8%, India, 6.3% and Vietnam, 4.2%. It is undeniable that the foreigners working in Malaysia have contributed to



the economic growth of the country, in particular by alleviating labour shortages in selected sectors of the economy but they still bring a lot of disadvantages to the country in terms of employment opportunity for local workers and effectiveness roles of trade union movement.

Currently government has agreed to approve the recruitment of 45,000 foreign workers from India to meet the demand in 13 small-scale business sectors, which are facing manpower shortage in year 2011. Human Resources Minister Datuk Dr S. Subramaniam said the approval was given after considering the plight of businessmen in these sectors such as restaurants, grocery shops and the textile industry, which was raised in a memorandum submitted by the Malaysian Associated Indian Chamber of Commerce and Industry (MAICCI) to the Prime Minister.

However, the Malaysian Trades Union Congress (MTUC) said it opposes strongly the proposed mass recruitment of 45,000 foreign workers from India because it would edge out locals from the labor market. MTUC vice-president A. Balasubramaniam said that such a big influx of foreign workers could have a profound effect on the wages of Malaysians and jeopardize the government's high-income policy for them. Furthermore A. Balasubramaniam mentioned that the government needs to prioritize Malaysians school leavers, retrenched, unemployed, university graduates, and the poor before deciding to hire foreigners. He further highlighted the government should get inputs from trade unions before approving permits for foreign worker.

In this situation, challenges facing by local employees in terms of salary scale due to current Malaysian foreign workers recruitment practices which emphasis in low salary scheme. One of the objectives of MTUC is to protect Malaysian unemployment in which standardization and coordination of foreign workers recruitment and the supply of local employability in Malaysia are vital. However, this approach was given after found the problem difficulty to recruit local workers as they are not attracted to low salary scale and working conditions introduced by the employers on certain sectors.

The objective of this paper is identifying the impact of current recruitment practices of foreign workers on local workers employability and trade Union rights in Malaysia. However, to date there has been limited research on the nature and consequences of employment of foreign workers in Malaysia and not been documented. This research would fill the gap on literature review in field of industrial relations.

Literature Review

Foreign Workers

A foreign worker is a person who employed in a country on a temporary basis to which the person is not a citizen. Foreign workers are recruited by the company, recruitment agency or hired whilst they were job seeking in the country to supplement the workforce of the country for a limited term or to provide skills on a contractual basis that the country seeks. Those



workers are including skill and unskilled, legal and illegal workers. The United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families legally defines a migrant worker as a "person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national". This Convention has been ratified by Mexico, Brazil and the Philippines (amongst many other nations that supply foreign labour) but it has not been ratified by the United States, Germany and Japan (amongst other nations that depend on cheap foreign labour).

Trade Union

Trade unions in Malaysia first emerged in the 1920s when the Communist Party of Malaya encouraged unskilled workers to unionize. There was no legislation then relating to trade unions in Malaysia. In 1940, a Trade Unions Enactment was passed in the Federated Malay States, which was extended throughout the Federation in 1946 (Baker & McKenzie, 2009). Trade unions in Malaysia have three categories which are In-house trade unions, "National" trade unions and Federations of trade unions. An in-house trade union is set up in a particular establishment to look after the interests of members in that establishment only. While, "National" trade unions are grouped according to industry, trade, or occupation, and their membership is not restricted to a particular establishment but geographically (for instance, a national trade union can draw its members only from Peninsular Malaysia, or Sabah, or Sarawak). However, a federation of trade unions is a combination of trade unions from similar industries, trades, or occupations (Baker & McKenzie, 2009).

Malaysian unions are generally small, fragmented and regional. This is due to the restrict requirements of Trade Union Act 1959. (Ramasamy, 2008) According to 2010 annual survey of violations of trade union rights in Malaysia, report shown there is no improvements were made in the problems that have plagued the trade union movement for years. The Malaysian government's failure to implement the new provisions under the Industrial Relations Act 1967 to resolve union recognition claims frustrated union representation for thousands of workers. The authorities continue to have far-reaching powers to regulate trade unions, which operate in a restrictive legal environment.

Local Workers

Local workers in Malaysia define as a potential workforce born in Malaysia and exceptional is also given to citizen who holds Malaysian Permanent Resident. We can further define the local workers into a smaller scale of workforce which are located at particular area of employment which needed the manpower. Local workers can be recruited directly by the employer or can be recruited by recruitment agency. Those local workers are including skill and unskilled qualification. Local workers are being governed by Employment Law Act 1957 and Industrial Relation Act 19. These acts protect the well being and welfare of the local workers from wrongly acts of an employer. In Malaysia, local workers are hired by the Government known as public sector civil servant and private sectors. The significance difference between government hiring and private hiring is the employees in public sector entitled for Government pensions



when they retired. However, employees in private sector were not entitled to government pensions, to a large extent; this is still valid until today. In order to ensure that employees from private sector are financially secure after their retirement, a scheme called Employees Provident Fund (EPF) was introduce.

Impact Of Foreign Workers Employment On Local Employability

Literature review suggests that employability is about work and the ability to be employed, such as the ability to gain initial employment, to maintain employment and make 'transitions' between jobs and roles within the same organization to meet new job requirements, and to obtain new employment if required. Hillage and Pollard, define employability to a person's capability for gaining and maintaining employment (1998). An alternative account of employability takes a more relative approach. Brown and Hesketh (2004) define employability as 'the relative chances of getting and maintaining different kinds of employment' While most people view employability in absolute terms, focusing on the need for individuals to obtain credentials, knowledge and social status, the concept of employability can also be seen as subjective and dependent on contextual factors. 'Employability not only depends on whether one is able to fulfill the requirements of specific jobs, but also on how one stands relative to others within a hierarchy of job seekers' (Brown and Hesketh, 2004). In individuals view, employability depends on the knowledge, skills and abilities (KSAs) they possess, the way they present those assets to employers, and the context (e.g. personal circumstances and labour market environment) within which they seek work (Hind and Moss, 2011). As such employability is affected by both supply-side and demand-side factors which are often outside of an individual's control.

When we look into the Malaysian local workers employability history, the Malaysian government have formulated and implemented a series of five year development plans and laid the foundation for the development of human capital in the country. From 1990, Malaysian economy grew rapidly and many jobs were created for locally in all the sectors especially manufacturing, agricultural and construction sectors. Entering the early 90s, Malaysia have experience a severe shortage of local workers especially in the manufacturing industries and construction. The local worker shortage later expanded to the construction sector and domestic services in the early 2000. Now, the shortage of worker of various sectors of industry is currently entering into the critical phenomena and this has been worsening by several combinations of reasons and causes. The economic growth and change that Malaysia has seen for the last decade is one of the leading causes of the worker shortages. This shortage was further escalated by combination of reasons and among them is attitude of local workers, revision of government education policy, improvement in living standard and ambitions to move forward.

The government has instituted various policies to regulate the employment of foreign workers and to control the entry of illegal foreign workers. "Foreign Worker Rationalization Programme" was formed to legalise illegal workers with an annual levy. Besides that, many Memorandum of Understanding (MOUs) have been signed with labour exporting countries like Indonesia,



Bangladesh, India and Nepal to authorise legal recruitment of foreign workers. Due to these policies, there is a rapid increase in the amount of foreign workers in our country which are flooding the market. The consequences of this phenomenon have incurred stress on public amenities and services, such as health and education facilities.

The relationship between employers and employees can seek a big different if compared to past decades. Existing of industrial relations and labor laws has created a protectionism and healthy environment for both parties in the workplace. However, there are still some issues existing in the society especially discrimination among the composition of workers occur in some industries. This has affected Malaysia as many employers plunge into hiring foreign workers which is void and null under section 60M of Trade Union Act 1959.

Numbers of foreign workers are increased from year to year whereby assisting companies to save costs by employed labors in lower scale salary. But, this caused unemployment rate increased among the local workers and thus uncertainty is possible at the same time by increased in such activities like crime, culture and illegal strikes. Besides, it will be a challenged to Malaysia for preparing the nation towards high income country.

Impact Of Foreign Workers Employment On Trade Union Rights

The past thirty years have born witness to an undeniable weakening of the power of unions in developed countries worldwide (Pencavel,2005). Average union density rates rose in all such countries from 1960 to 1970 then began to fall steadily, a process which has continued until present. It is undeniable that there has been a decrease in union density in many countries across the world. It adversely affected the unions in Malaysia which are operating in a difficult environment. There is a high degree of government involvement which can be traced back to the British colonial government which has set the precedent for direct state intervention in industrial relations and the activities of organized labour.

According to Sharma (1989), the Essential Regulations in Malaysia were enacted in May 1965, empowering the Minister of Labour to prescribe any industrial action and to refer any dispute to binding arbitration. The major provisions of the Essential Regulations were formalized in the Relation Act passed in 1967 (with amendments in 1971, 1976, and 1980). This Act, together with Trade Union Act of 1959 (amended in 1980), provides the legal framework for industrial relations in Malaysia which directly influence the growth of trade unions in Malaysia. Unions in Malaysia, especially in the private sector, engage in collective bargaining are quite limited. In Malaysia, even though workers have the right to form and join trade unions Section 5 of the Industrial Relations Act, 1967), their movements are carefully monitored and controlled under various labor legislations. Besides legislation, the effect on the growth and rights of trade unions in Malaysia is also influenced by other composition of workers known foreign workers.

In Malaysia, union membership levels have fluctuated over time. Union membership stood at 327,673 in 1965. There was a continuous decline in the membership from 1965 to 1970 and continuous increase from 1971 to 1979. In the years 1980 and 1982, there was small drop.



However, the membership increased again reaching close to 600,000 in 1983. The average annual union density during the period 1965-1983 was 9.9 percent in Malaysia. An understanding of the factors that influence union growth is important because it has major implications on strength of unions in representation and representativeness (Sharma, 1989).

Another challenges is the increased use of contract or agency labour in the industry or in Malaysia known as contractor. When employers reduced their permanent workforce in favour of casual employees, employers usually do not consult their respective trade union but recruit the foreign workers to fill the vacancy which the locals flushed away. Lansbury (2009) viewed that globalization has exerted pressures on job security in a number of countries. Workers have been displaced by shifts in the companies which is no longer the preference of local workers has created competitive position in the world's markets and also by the position of countries in the international division of labour.

Issues

According to the Ministry of Human Resource Malaysia (2010), foreigners are more devoted to their job, when they are given additional work, because of their urge towards the job and the wages; an exact opposite of the local employees, who normally give reasons to avoid from working extra hours, and decide things last minute. Thus, local workers are nosed out due to the employers' desire to reduce the cost by hiring low cost labour. Therefore, the degree of unemployment of local workers increases. Employers feel more delightful having foreign workers working for them and that result in local workers not being selected for the job. The increases in the number of foreign worker lead to more strong competition for jobs which threaten to local workers. The increase the number of foreign workers result in high unemployment rate of local workers. Eventually, it ends up with locals' lower purchasing power; giving negative effects to Malaysia's GDP and at the same time hinders the growth of economy.

Another issue is that locals are being deprived and discriminated in their rewards system. Local workers are threatened by foreign workers' low requirement of payment, quality of work, and other fringe benefits. Foreign workers who can bear with lower incomes and unfavorable terms and conditions of employment are more sought by local employers, since main purpose of foreign workers is to gain sufficient income in a short period of time. In this point of view, Malaysian local workers are not being protected against cheap foreign labor. From a theoretical point of view, if foreign countries can produce a good at lower cost than we can, it is in our collective interest to obtain it from them. But workers counter by saying that the low wages of foreign workers means that foreign workers are exploited. To compete with foreign workers, Malaysian Local workers would have to submit themselves to similar exploitation. This objection, however, fails to recognize that differences in wage rates generally reflect differences in workers productivity. If we assume that the manufacturing industry is competitive, then the wages in both countries are based on the marginal revenue product of the workers. The higher wage of Malaysian workers must mean that they have a higher marginal product and they should be more productive.



The aim of the Malaysian government on reducing the number of foreign workers by increasing the levies, in order to reduce the dependency of Malaysian employers on foreign workers was put to a stop by the outsourcing companies whereby their main income comes from recruitment of foreign workers. These companies influence employers to employ foreign workers rather than locals simply because it's cheaper. Employers hire foreign workers to escape quota limit through outsourcing company which is their primary income when bringing in foreign workers to Malaysia. The objective of reducing the dependency on foreign workers could not be achieved when the employers choose to hire foreign workers by bypassing the ELX system which can be seen under Appendix 1. Electronic Labor exchange (ELX) system was created in year 2004 in line with government initiatives and aimed to improve the mobilization of the nation's Human Resources. This system aims to encourage more local placement in the employment and reduce number of hiring foreign workers. By then, the outsourcing company took advantage of the loop-hole in this system.

The strength and power of the trade union movement cannot be judged by the number of registered unions. In general, the size and density of membership and the financial status of the unions are very significant factors (Johari, 2006). Although numbers of trade union in Malaysia shown increasing trend all the way through the year from 2005 to 2010, its number of membership spectacularly dropped from 806,860 in year 2009 to 803,289 in year 2010. Its total number of membership continues decrease to 802,136 in Jun 2011. (Refer to Table 1)

YEAR	NUMBERS OF	TOTAL MEMBERSHIP				
	TRADE UNION	Total	Male	Female		
2005	621	761,160	464,308	296,852		
2006	631	801,585	484,016	317,569		
2007	631	803,212	485,306	317,906		
2008	659	805,565	486,978	318,587		
2009	680	806,860	487,679	319,181		
2010	690	803,289	485,747	317,542		
2011	686	802,136	484,901	317,235		

Table 1: Number Of Membership, Trade Union And Its Membership By Gender In Malaysia, Year 2005-Jun 2011

Therefore, this phenomenon clearly revealed that unemployed locals has no room to join trade union the reason because most of the industries and occupation flooded by foreign workers and this scenario become worst as foreign workers showing less interest on trade union participation. Since, foreign workers has showered most of the industries, occupation and trades has inevitably caused massive blow for trade union membership and their rights because



employers making discreet movements also attempts to threatened workers from joining and being active in union.

With respect to Malaysian industrial relations, the freedom of unions to organize and bargain was restricted through legislation. The industrial relations rules and regulations that had been established would reflect the state's effort to put down industrial conflict in the interest of economic development. Despite these conditions, unions are growing in size in Malaysia. This increasing trend covers unions from the public and the private sectors. (Johari, 2006) In table 2, there are 439 trade unions from private sector while 139 from government sector in year 2010.

SECTOR	2005	2006	2007	2008	2009	2010	Jun
							2011
PRIVATE	390	396	407	421	436	439	431
GOVERNMENT	127	130	130	132	137	139	142
STATUTORY BODY							
AND LOCAL	91	92	92	92	93	98	99
AUTHORITY							
EMPLOYER	13	13	13	14	14	14	14
TOTAL	621	631	642	659	680	690	686

Table 2: Number Of Trade Union By Sector In Malaysia, Year 2005-Jun 2011

Further, the formation of trade unions by industry was imbalance even though the total number by industry of trade unions formed increased in every year. Table 3 shows there is only a union formed in mining and quarry industry and trade unions in construction industry revealed stable in the past 6 years.



INDUSTRY	2005	2006	2007	2008	2009	2010	Jun
							2011
AGRICULTURE,							
FORESTY AND	54	55	55	58	58	56	54
FISHERY							
MINING AND	1	1	1	1	1	1	1
QUARRY	1	1	1	1	1	1	1
PRODUCTION	146	150	154	159	162	169	170
ELECTRIC, GAS	39	39	40	40	40	40	40
AND WATER	35	39	40	40	40	40	40
CONSTRUCTION	11	11	11	11	11	11	11
COMMERCE	18	19	21	24	32	32	30
TRANSPORTATION							
AND	61	61	62	63	65	64	59
TELECOMMINICAT	01	01	02	03	03	04	39
ION							
SERVICES	291	295	298	303	311	317	321
TOTAL	621	631	642	659	680	690	686

Table 3: Number Of Trade Union By Industry In Malaysia, 2005-Jun 2011

According to Jose (2000), trade unions have been important institutions of the industrial society. Apart from being successful in legitimizing the workers' struggle, they have helped deliver significant outcomes in terms of empowering their members and fighting for equity and justice to workers all over the world. The impact of globalization is set to be another defining moment for unions. Recent decades have seen profound changes in the political, economic and the fusion of employees in employment of workforce spheres, which have had negative effects on their position and influence. Jose (2000) reported that the composition of workers is also changing and they are increasingly differentiated by their competence. However, majority of workers belong to the lower end of the scale, usually employed in service industries and occupations, and they are mainly the foreign workers.

Chronic labor migration is a worldwide phenomenon and Malaysia is well known in this respect as a leading importer of labor. While many of these foreign workers have adopted and adapted to their point of destinations with relative ease in terms of language and work ethics which became a major threat for local workforce, a large number still have to combat exploitations and abuses in their workplaces. Among the group of foreign workers commonly claimed to be exploited or abused are the legions of women working as domestic helpers and entertainers also men in construction works (Estrella-Gust 2000). It has been a sensational issue not only in Malaysia perhaps the delicacy to the other nation yet many employers still lacked of awareness



on giving rights and protection to the workers by allowing them joining their respective trade union.

Recommendations

The Independent body which ought to be made-up of various interest parties, NGO and government authority can be established and empowered to invigilate the recruitment process of foreign workers. This independent body can monitor local employers and other related agents whether they are act in accordance with proper procedure and also to identify or prohibit any foreplay in recruitment of foreign works. Moreover the independent body has to be given right to oversees and access to companies' database in identifying illegal or unregistered foreign workers. Upon identifying wrong doings the Independent body needs to ensure proper reporting of cases to enforcement body for immediately action to be taken by relevant Malaysian authorities (i.e. The Immigration Office and The Police).

Improvising and enforcement of existing Biometric database system is ideal to keep the control on foreign worker in the country. Is should be made mandatory that all illegal foreign workers must have their fingerprint taken and stored by the Immigration Database for future reference. Thus also to make sure and avoid the group of illegal immigrants do no re-enter or leave Malaysia under different names or passport. This effort will keep the follow of foreign workers into the county under control and will only increase or decrease base on market requirement.

Vocational schools education system in Malaysia need to be review in terms of delivery skills in order to polish the local skills during secondary school level such as welding and wiring. Thus, this will avoid the country from excessively depending and relying on foreign workers to practice major jobs involving skills such as manufacturing, construction and etc. Vocational, or skills-based, education in the country need a serious revamp, since it is becoming more important today, with many employers expecting new employees to have all the practical skills they need to start work. Vocational courses are typically more practical and skills-based than academic degrees, but they are often taught at higher learning institution in Malaysia rather than preliminary school level. Therefore the county experiencing drought of skilled workers to fulfill the demanding needs of various job sectors. Hence the employers in Malaysia forced to rely heavily on labor and skills of foreign workers to fill in the gap left by the incompetent local workers.

Human Resource Ministry should get advice and recommendation from Malaysian Trade Unions before approving permits for foreign workers. Since the trade unions are the connoisseur in recognize the need of foreign workers at the same time to safeguard and protect the interest of local employee without injuring their privilege and rights. The absence of trade unions' involvement will result in uneven between the local and foreign workers in various job sectors. This state of affairs will later subject to abuse, where employer will hire foreign workers for lower pay and force any local employee to take similar wages. Therefore by inclusion of Trade Unions in decision making or policy making will preserve the interest of local employee and prevent unwanted foreign worker to flood the country.



Conclusion

As a conclusion, foreign workers coming into Malaysia and working here is very essential to our economy as it makes us grow into a much successful nation. At the same time, the government should regulate the number of foreign workers entering the country as it reduces employment opportunities for the locals as employers prefer hiring foreigners. If the government does not take the necessary steps, our industries will be too dependent on foreign workers and this could turn out to be the downfall of the country. Employers must give priority to local workers instead of discriminating the local workers. It is unfair to the local workers for them to compete with foreign workers and accept low wages in their own homeland. Local workers should be given fair treatment in terms of being employed. In terms of wages and treatment in workplace, foreign workers should receive the equal treatment as local workers. In conclusion, hiring foreign workers will bring benefits to our country and it also will harm and threaten to our country. Hiring foreign workers have boosted the economic growth rate of our country but it also lead to our country become unsecure and criminal occurred frequently.

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